IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

WP(C).No. 25640 of 2007(B)

PETITIONER:

MS.AMANA JEWELLERS,
CHUMGAM, PATTIKKAD, MALAPPURAM DISTRICT,
REPRESENTED BY MANAGING PARTNER MUSTHAFA KAMAL.

BY ADV. SRI.P.RAGHUNATH
SRI.PREMJIT NAGENDRAN

RESPONDENTS:

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1. COMMERCIAL TAX OFFICER,
COMMERCIAL TAXES DEPARTMENT, PERINTHALMANNA.

2. DEPUTY COMMISSIONER OF COM.TAXES,
MALAPPURAM.

3. STATE OF KERALA REPRESENTED BY
COMMISSIONER OF COMMERCIAL TAXES, TRIVANDRUM.

BY G.P. SRI.SREEKRISHNA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: PHOTOCOPY OF REPRESENTATION DT.23.2.2007.

P2: PHOTOCOPY OF NOTICE IN FORM 4D DT.15.3.2007.

P3: PHOTOCOPY OF LETTER DT.30.03.07.

P4: .DO. DT.2.6.07.

TRUE COPY

P.A. TO JUDGE

C.R.

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.25640 of 2007

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Dated this the 19th day of September, 2007.

JUDGMENT

The petitioner a jeweller is challenging Ext.P2 order whereunder the Assessing Officer has computed the value added tax payable by the petitioner at compounded rate under Section 8(f)(i) of the KVAT Act for the assessment year 2006-2007. The petitioner's case is that petitioner is liable to pay tax at compounded rate under Section 8(f)(ii) of the Act read with Explanation 1 to the said Section and not under Section 8(f)(i) read with Explanation 1 as computed by the officer. The petitioner admittedly commenced business in February 2004 and had carried on business only for 51 days during the financial year 2003-2004. The petitioner had business for the whole period for the financial years 2004-2005 and 2005-2006. The question is under which provision, tax liability has to be computed at the compounded rate for the assessment year 2006-2007. In order to appreciate the contentions, the relevant provisions have to be referred to and for easy reference the Section is extracted hereunder:

"Sec.8: Payment of Tax at compounded rates:

Notwithstanding anything contained in Section 6,-

(a) (i) any works contractor ....

(b) any dealer producing granite metals ....

(c) any dealer in cooked food ....

(d) any dealer who transfers the right to use video ....

(e) any dealer who is an importer ....

(f) (i) any dealer in ornaments or wares or articles of gold, silver or platinum group metals may at his option, instead of paying tax in respect of such goods in accordance with the provisions of Section 6, pay tax at 200% of the highest tax payable by him as conceded in the return or accounts, either under this Act or under the Kerala General Sales Tax Act, 1963 (15 of 1963), for a period of twelve months during any of the three consecutive years preceding that to which such option relates.

(ii) A dealer who is not eligible for option under sub-clause (1) may at his option, instead of paying tax in accordance with the provisions of section 6, pay tax at four hundred percent of the tax payable by him as conceded in the return or account, or tax paid by him under this Act, whichever is higher, for the previous year.

Explanation 1:- Where during any such preceding year, the dealer had not transacted business for any period in that financial year, the tax payable for the twelve months shall be calculated proportionately on the basis of the tax payable for the period during which such dealer had transacted business."

2. The contention of the petitioner is that since petitioner did not carry out business for 12 months in 2003-2004, petitioner's liability for tax at compounded rate is under sub-section (ii) of Section 8(f) and not under sub-section (i) of the said Section. The Government Pleader on the other hand supported the order of the officer and contended that Explanation applies to

both sub-sections (i) and (ii) and since petitioner has not carried on business for 12 months in the first year namely, 2003-2004, the officer was bound to gross up the turnover and tax for that year to determine the highest tax payable by the petitioner for any of the three consecutive preceding years prior to the relevant year 2006-2007. I am of the view that Explanation 1 applies to both sub-sections (i) and (ii) of Section 8(f) of the Act. Sub-section (i) of Section 8(f) applies to any dealer who has carried on business for any period above two years prior to the relevant year for which tax has to be computed at compounded rate under the said Section. In other words, if a dealer had carried on business for two full years out of the three financial years 2003-2004 to 2005-2006 and for any period for the remaining financial year, then such dealer is covered by Section 8(f)(i) read with Explanation and the highest tax payable for any of such years has to be determined by grossing up the turnover and tax paid for the remaining period of the year in proportion to the turnover achieved or tax paid for the period during which business was carried on. Since petitioner admittedly carried on business for 51 days during 2003-2004 and carried on business for the full period for the two financial years 2004-2005 and 2005-2006, petitioner is squarely covered by sub-section (i) of Section 8(f) read with Explanation and the officer rightly grossed up the turnover and tax for 2003-2004 based on turnover and tax paid for 51 days of the said year

during which petitioner carried on business and worked out tax at compounded rate for the year 2006-2007. The petitioner's contention that Explanation applies to only Section 8(f)(ii) is incorrect. In fact Explanation applies to sub-section (ii) also and such situation applies to only dealers who had carried on business only for part of the previous year and who had not carried on business for two preceding years prior to the previous year. In other words, sub-section (ii) of Section 8(f) read with Explanation applies to a dealer who commenced business in the previous year relevant to the year for which tax at compounded rate is to be computed where such dealer had not carried out business for the full period of the said previous year. In the circumstances, the tax computed under impugned order namely, Ext.P2 under Section 8(f)(i) read with Explanation 1 thereto is perfectly in order and the W.P. is therefore rejected. However, I make it clear that since the order is issued as late as 15.3.2007 under Section 8(f)(i), respondents cannot demand interest for belated payment provided petitioner clears the arrears within three weeks from now.

C.N.RAMACHANDRAN NAIR
Judge

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